IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1014 of 1999

in

SPECIAL CIVIL APPLICATIONNo 1945 of 1985
with
CIVIL APPLICATION NO. 7569 OF 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE J.M.PANCHAL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIRECTOR OF EMPLOYEES STATE INSURANCE SCHEME

Versus

G T PATEL

Appearance:
MR RC KODEKAR for MR SP HASURKAR for Appellants
TANNA ASSOCIATES for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE J.M.PANCHAL

Date of decision: 28/06/2000

ORAL JUDGEMENT

C.A.V. JUDGMENT (Per D.M. Dharmadhikari, C.J.)

#. By this Letters Patent Appeal, the appellants, who are employers, assail the order of the learned Single Judge dated 26-11-1998, whereby the order imposing punishment of dismissal from service dated 4-2-1984 passed by appellant No.1, Director of Employees State Insurance Scheme, against the respondent-employee, Shri G.T. Patel, has been quashed and the employee has been directed to be reinstated in service to his original post, with full arrears of pay and all other consequential benefits. The learned Single Judge, after granting the above relief, has remitted the matter to the Disciplinary Authority, for consideration of imposition of a minor punishment on the employee.

#. Learned Counsel appearing for the employer contends that the learned Single Judge having upheld the findings of the Disciplinary Authority on charges Nos. 1, 3 and 5, ought not to have interfered in the quantum of punishment. Reliance is placed on State Bank of India and Others V. Samarendra Kishore Endow and Another (1994) 2 SCC 537, B.C. Chaturvedi v. Union of India and others AIR 1996 SC 484 and State of Punjab and Ors. V. Dr. Harbhajan Singh Greasy 1996(4) SLR 30. Relying on the aforesaid decision of the Supreme Court, it is submitted that the learned Single Judge, on the findings of the Disciplinary Authority, could not have held that the punishment imposed was disproportionate, and in any case, even if it is held that the punishment imposed was shockingly disproportionate, he ought to have left the matter to the disciplinary authority, for imposing any other major punishment than dismissal or removal or minor punishment. Learned counsel for the respondent argues that in any case, there was no justification to award to the employee full arrears of pay and other consequential benefits, admittedly, when the employee was found careless and negligent in performance of his official duties. The Supreme Court in the case of B.C. Chaturvedi (supra) held as under:

> "The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the

appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

#. Learned counsel appearing, on the other hand, on behalf of the employee, in reply, contends that neither the Disciplinary Authority nor the learned Single Judge has found the employee to have committed any misconduct with any dishonest intention. From the charges found proved, he was held only careless and negligent in performance of his duties. The learned Single Judge, therefore, rightly found that the punishment of removal imposed on him was shockingly disproportionate. Having thus found that the punishment was disproportionate, it was open to the Court not only to interfere in the quantum of punishment but in view of the long pendency of the case, it could have substituted any other punishment for the one imposed by the Disciplinary Authority. In support of the above submission, reliance is placed on a decision of the Supreme Court in the case of U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others AIR 2000 SCW 931.

#. From the record of the Disciplinary proceedings, it is clear that the employee was working on the post of Store Officer, Class III in Central Medical Stores, Employees State Insurance Scheme. He was proceeded against in disciplinary action for five charges, out of which, only the following charges Nos. 1, 3 and 5 were found proved, but according to the Disciplinary Authority and the learned Single Judge, no dishonest intention on the part of the employee was proved:

"(1)Even though it had come to your notice in September, 1980 in respect of the less quantity as well as about non-receipt of the quantity of goods from Marfatia Bharatkumar Co., instead of not intimating the said facts to the Heard Office immediately, the same has been intimated on 21.10.80. Thus, avoidable delay has been there in not intimating the same to Head Office in time and thereby you have shown carelessness in discharging your duties as a result of which, the Government has suffered financial loss/damage.

(2) x x x x x

(3) That vide letter dated 13.11.80 you had forwarded the statement of the outstanding/due receipts to the Head Officer, but by not making a mention in respect of the goods in respect of the receipt for Rs. 33056.00 you have knowingly suppressed this information from the Head Office and thereby provided convenience to the Marfatia in misappropriating the goods and caused financial loss/damage to the Government.

(4) x x x x x

(5) That eventhough you were having knowledge about less receipt of goods and also completely non-receipt of goods from the Marfatia and even after the issuance of written instructions from the Head Office, you have not filed any police case between 1.9.80 till 16.11.80."

#. The learned Single Judge upheld the findings of the Disciplinary Authority on the above charges, but interfered in the quantum of punishment by making following observations:

"5. It appears from the facts and circumstances of this case that the petitioner has not applied much more due diligence and care when he signed the statement which was prepared by the junior clerk and verified by the senior clerk and he has not reported the matter to the police within 2.1/2 months. It is not a case of the department that the petitioner has initiated legal proceedings against Marfatia when he was directed by any superior authority. It appears that some delay might be due to heavy work as 3 to 4 places where he was working, he might not have personally checked statement which were already checked by the senior clerk and endorsed by him. It is only a negligible mistake which cannot amount to serious misconduct in strict sense. For that purpose, certainly this Court feels that the punishment of removal awarded by the punishing authority is shocking and disproportionate when petitioner's act does not amount to misconduct in strict sense."

#. From the cases of Supreme Court cited at the Bar, the legal position is settled that the power of judicial review of the courts does not permit interference in the quantum of punishment imposed by the Disciplinary

Authority, unless the courts have come to conclusion that the punishment imposed is shockingly disproportionate to the charges levelled. In the instant case, no dishonest intention has been found on the part of the employee in committing the misconduct. He was only found guilty of dereliction of duty and carelessness. The imposition of punishment of removal from service was therefore, rightly held to be shockingly disproportionate, and we find no ground to interfere in that part of the conclusion of the learned Single Judge.

#. The other submission made on behalf of the appellant employer, however, deserves consideration as to whether the learned Single Judge was justified in granting relief of reinstatement with full arrears of pay and other consequential benefits and relegating the employee to the jurisdiction of Disciplinary Authority restricting its power to impose only minor punishment. The normal course available to the court exercising powers of judicial review, where it finds interference in the quantum of punishment desirable in the interest of justice, is to set aside the punishment imposed and to leave the question of imposition of punishment to the Disciplinary Authority. It was not, therefore, strictly in accordance with law for the learned Single Judge to have granted the relief of full arrears of pay and other consequential benefits to the employee and remitting the case to the Disciplinary Authority with directions only to impose one of the minor punishments. Under the Service Regulations, which are applicable to the services of the employee, it has been brought to our notice that, apart from the major penalty of removal and dismissal from service, there are other major punishments provided, with various kinds of minor punishments imposable on an employee found guilty of misconduct. The learned Single Judge was therefore, not right in restricting the power of the Disciplinary Authority to impose only minor punishment. There is also some merit in the criticism levelled on behalf of the appellant employer that there was no justification for the learned Single Judge to have granted relief of full payment of arrears of pay and other benefits, even though he had found justification in interfering in punishment of removal of employee from service.

#. The question of awarding relief of arrears of pay and other benefits should also have been left to the Disciplinary Authority, when it had to decide the question of imposing punishment other than dismissal or removal.

#. In the rarest of rare cases, the Supreme Court in

case of Mahesh Kumar Mishra (supra) has held that in exercise of powers of judicial review the court can interfere in quantum of punishment and may substitute any other punishment, for the one imposed by the Disciplinary Authority. That course could have been followed by the learned Single Judge. We propose to adopt that course in this particular case, as the learned counsel for the respondent - employee has pointed out to us that after his removal from service on 4-2-1985, till the hearing of this appeal, as a result of interim orders of this Court the employee has been out of employment, and that in itself was more than necessary punishment for the charges proved against him of mere carelessness or negligence in performance of his duties. The learned counsel for the appellant - employer is right in submitting that it would be unduly harsh and highly unjust, now to relegate him to the jurisdiction of the Disciplinary Authority for deciding the question of imposition of any other punishment on him and deciding the question of arrears of salary and monetary benefits.

##. We are informed that by this time, the employee has attained the age of superannuation, and cannot be taken back in service, as a result of order of reinstatement. On the basis of that order, all that he can claim is his arrears of pay and other benefits, from the date of his removal to the date of his notional reinstatement and notional continuance in service upto the date of his attaining the age of superannuation.

##. After hearing the learned counsel for the parties, we are, therefore, of the opinion that instead of relegating the employee again to the jurisdiction of the Disciplinary Authority, it would be proper to substitute the punishment of depriving him of 50% of arrears of salary for the intervening period after his removal from service and the date of his attaining the age of superannuation.

##. As a result of the discussion aforesaid, the appeal is only partly allowed by modifying the order of the learned Single Judge by directing that the appellant employer shall treat the employee to be in service through out till he has attained the age of superannuation but he would only be entitled to half the arrears of pay and other monetary benefits. Since, this is a case of removal from service of the year 1985, we direct the appellants - employer to work out half the arrears of pay and other monetary and consequential benefits payable to the employee within a reasonable period of 3 months from the date of this order and pay

the same to him, failing which, the amount due and recoverable shall carry interest @ 15% per annum.

Under the circumstances, the parties shall however, bear their own costs.

The Civil Application shall also accordingly stands disposed of.

(D.M. DHARMADHIKARI, C.J.)

(J.M. PANCHAL, J)

At the time of pronoucement of judgment, learned counsel for the respondent states that on an interim order made by this Court on 4-10-1999, an amount of Rs. 25,000/- towards backwages were deposited in this Court against the dues of the present employee. The amount deposited shall now be allowed to be withdrawn.

(D.M. DHARMADHIKARI, C.J.)

(J.M. PANCHAL, J)

snd